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C.O. 929 of 2022

**Sk. Ahmed Hossain & Ors
Vs
Sk. Abdur Rahaman & Ors**

Mr. Sanjib Seth,
Mr. Saptarshi Basu, ... For the petitioners.

The subject matter of challenge in this revisional application is against the appellate decision passed in Misc Appeal No. 64 of 2017 of learned Additional District Judge, 10th Court, Alipore, affirming the order of learned Civil Judge (Junior Division), 2nd Court, Alipore in Title Suit No 22 of 2016.

Admittedly, petitioners/defendants have been suffering injunction under Order 39 Rules 1 and 2 of the CPC.

An appeal was then carried vide Misc Appeal No. 64 of 2017, as referred hereinabove, which was dismissed subscribing reasons therefor.

Mr. Sanjib Seth, learned advocate appearing for the petitioners submits that the suit is hopelessly barred under the provisions of the law, as the Civil Court is denuded from exercising jurisdiction in this case, because the suit property is comprised of thika tenancy.

It is thus contended that both the Courts below

have erroneously decided the prayer for injunction without dealing with the core issue in this case pertaining to thika tenancy.

Admittedly, injunction application has already been disposed of. Issues have not yet been framed.

As per submission disclosed by the learned advocate for the petitioners, the specific defence of the defendants/petitioners as regards the thika tenancy of suit property has been specifically disclosed in the written statement already filed for the purpose.

That being the position, the Trial Court would be the best authority to decide such issue in accordance with the provisions of the law.

Petitioners are given liberty to agitate such facts at the time of final hearing of suit before the Trial Court.

In the absence of any apparent jurisdictional error, said to have been committed by the lower appellate Court, exercise of jurisdiction under Article 227 of the Constitution of India is not encouraging one. More so, there is no express perversity disclosed in the impugned order, without which, the order impugned does not call for any interference.

This would not, however, prevent the Court below from framing a specific issue pertaining to the point now raises by the petitioners, mentioned

hereinabove. If any such point is raised pertaining to the thika tenancy, as agitated hereinabove, the same shall be resolved by the Court below, in accordance with the provisions of law, providing sufficient opportunity of hearing to either of the parties to this case.

Since there is already a direction recorded by the first lower appellate Court, as regards expeditious disposal of the suit, this Court believes and reposes confidence upon the Trial Court that the suit may be disposed of expeditiously.

Petitioners are directed to make communication of this order to the learned court below as well as to the learned advocate appearing in the court below for the opposite parties and the opposite parties.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)